

**From:** JoAnne Montanez [<mailto:JoAnne.Montanez@ci.stockton.ca.us>]  
**Sent:** Tuesday, May 31, 2011 2:34 PM  
**To:** Martin, Elaine@DeltaCouncil; Grindstaff, Joe@DeltaCouncil  
**Subject:** Emailing: Draft Delta Plan - 1 of 10

Please see the attached. These are the City of Stockton's proposed changes to the Draft Delta Plan as promised.

Parts 6-10 will follow in another e-mail.

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**NOTE: Attachments consolidated by DSC staff**

**From:** JoAnne Montanez [<mailto:JoAnne.Montanez@ci.stockton.ca.us>]  
**Sent:** Tuesday, May 31, 2011 2:35 PM  
**To:** Martin, Elaine@DeltaCouncil; Grindstaff, Joe@DeltaCouncil  
**Subject:** Draft Delta Plan

Here are parts 6-10.

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# APRIL 22, 2011

## THIRD STAFF DRAFT DELTA PLAN

This is the third of four (4) staff draft versions of the Delta Plan that will be presented to the Delta Stewardship Council prior to the release of the Draft Environmental Impact Report (EIR) by mid-June 2011. The staff draft versions will be released in the following order.

- ♦ **February 2011:** First Staff Draft Delta Plan was posted on February 14, 2011 and discussed at Delta Stewardship Council meetings on February 24 and 25, 2011 and March 10 and 11, 2011.

- ♦ **March 2011:** Second Staff Draft Delta Plan was posted on March 18, 2011 and discussed at Delta Stewardship Council meetings on March 24 and 25, 2011 and April 14 and 15, 2011.

- ♦ **April 2011:** Third Staff Draft Delta Plan was posted on April 22, 2011 and discussed at Delta Stewardship Council meetings on April 28 and 29, 2011 and May 12 and 13, 2011.

- ♦ **May 2011:** Fourth Staff Draft Delta Plan (for modification and approval by the Delta Stewardship Council to be circulated with the Draft EIR).

- ♦ **June 2011:** Draft Delta Plan and Draft EIR are circulated.

After circulation of the Draft EIR, comments obtained on the Draft Delta Plan and Draft EIR will be considered. Delta Stewardship Council staff will prepare written responses to comments received on the Draft EIR; those responses will become part of the Final EIR. The Delta Plan will be finalized in light of the comments and Final EIR. In November 2011, the Delta Stewardship Council will consider the Final EIR for certification under CEQA, then consider the final Delta Plan for adoption.

At each stage of the development of the Staff Draft Delta Plan there will be public meetings at the Delta Stewardship Council meetings for the purpose of receiving information and comments and for Delta Stewardship Council deliberation. All Delta Stewardship Council meetings are public and simulcast on the Delta Stewardship Council website at [www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov).

In addition, public comments are welcome during the entire process and will become a formal part of the record. The Delta Stewardship Council encourages written public comments to be submitted to [deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov). All comments received by Friday, May 6, 2011, will be considered for revisions made in developing the Fourth Staff Draft Delta Plan. All comments received are posted to the Delta Stewardship Council web site: <http://www.deltacouncil.ca.gov/>

### RELEVANT POINTS TO THE APRIL 22, 2011 THIRD STAFF DRAFT DELTA PLAN

- ♦ The Executive Summary is under development and not included in the Third Staff Draft Delta Plan.
- ♦ Graphics are under development and not included in the Third Staff Draft Delta Plan. The Department of ~~Water Resources~~ Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service *Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone* (2010) will be posted Monday, April 25, 2011.
- ♦ Technical editing for all information in the Staff Draft Delta Plan versions, including fact-checking, grammatical, and style changes, and inclusion of additional citations and references will be ongoing.

## Phasing of the Delta Plan and the First Five Years

Over the next 90 years, the Delta Plan will be developed in phases, consistent with the principles of adaptive management and availability of new and improved information. Again, the Delta Stewardship Council must review the Delta Plan at least every five years, but may adopt revisions more frequently (Water Code section 85300(c)).

The Delta Plan identifies key milestones date for the Delta Stewardship Council to evaluate the performance toward achievement of the coequal goals. These milestones are:

- φ **2025 (Near Term):** The timeframe in which the Bay Delta Conservation Plan is scheduled for implementation, many of the Delta levees and associated structures will be approaching 150 years of age (although many structures will have undergone substantial repairs), and additional sea level rise is projected to occur;
- φ **2050 (Mid Century):** The timeframe by which the water supply contracts for the State Water Project and Central Valley Project will be renewed, many of the Central Valley Project reservoirs will be approaching 100 years of age, and additional sea level rise is projected to occur; and
- φ **2100 (Long Term):** The timeframe by which much of the infrastructure within the Delta will be 150 years to over 200 years old (although many structures will have undergone substantial repairs) and sea level rise of ~~more than 40~~-55 inches is projected to occur.

The **initial five years** after adoption of the Delta Plan will be critical to its success. Additional, vital sources of information, including the Bay Delta Conservation Plan, Delta water flow standards, and improved water use data are scheduled to become available during this five-year period.

## Geographic Scope and Use of the Delta Plan

Because California's water supply reliability and Delta ecosystem concerns are united in the Delta, the geographic scope of the Delta Plan must include areas that divert water upstream of the Delta and those areas that export water from the Delta. This is virtually the same planning area used for the CALFED Bay-Delta Program.

The scope of the Delta Plan encompasses the Delta and Suisun Marsh, the Delta watershed, and areas of the state that use water from the Delta watershed, as shown in Figure 1-1. The Primary Planning Area includes the statutory Delta (as defined by the Delta Protection Act of 1992) and the Suisun Marsh. For the purposes of the Delta Plan, the Delta and the Suisun Marsh are collectively referred to as the "Delta," unless otherwise specified.

The Secondary Planning Area includes the Delta watershed, the Upper Trinity River Watershed, and areas outside the Delta in which exported water is used. In setting these boundaries, the Delta Stewardship Council recognized that the Sacramento-San Joaquin Delta Reform Act of 2009 requires that the Delta Plan address certain statewide water issues that are vital to sustainable management of the Delta (see, for example, Water Code sections 85020(a),(d),(f), and (h) 85302(b), 85303, 85304, and 85307 (a)).

The Delta Plan contains both regulatory policies, which are mandatory, and recommendations that are discretionary. Covered actions must be consistent with the plan's regulatory policies. Covered actions are defined as:

*"...a plan, program, or project as defined pursuant to Section ~~20165~~21065 of the Public Resources Code that meets all of the following conditions:*

- 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." (Water Code section 85057.5)*

Certain actions are exempted from the definition of "covered action," including a regulatory action of a State agency, routine maintenance and operation of the State Water Project or the federal Central Valley Project, or local public agency routine maintenance or operation of any facility in the Delta (Water Code section 85057(b)).

## Use of Adaptive Management in the Delta Plan

The Delta Stewardship Council is required by law to use the best available science and adaptive management as the basis for the Delta Plan. The Delta Plan must include "a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions" (Water Code section 85308(f)).

The scientific body of knowledge of the Delta and California's water conditions is constantly growing and changing, but Delta-related resource management decisions are often made with incomplete information.

Adaptive management provides the necessary flexibility to manage complex natural resources in the face of considerable uncertainty. Adaptive management starts with information. The Delta Plan requires the development and submission of water use data and other data that are currently unavailable or inaccessible. This information is foundational to scientific judgments and adaptive management, and will inform the Delta Stewardship Council as it updates future versions of the Delta Plan. The Delta Stewardship Council is required to review the Delta Plan at least once every five years, but may do so more frequently—but only if relevant information is available. The next chapter, Science and Adaptive Management for a Changing Delta, provides detail of an adaptive management framework that will be used to guide the development and subsequent revisions of the Delta Plan. The framework includes an assessment of progress toward meeting the objectives of the Act and Delta Plan, and identification and assessment of possible adaptive management actions.

In addition, ongoing water management and ecosystem restoration covered actions will be required to adhere to the adaptive management framework described in Chapter 2. Proponents of proposed covered actions must describe how they intend to apply the adaptive management framework, including a commitment for communicating to the public the information learned during the monitoring and assessment of implemented actions. The Delta Stewardship Council will use the improved understanding gathered through the implementation of covered actions and associated research to revise the Delta Plan.

Chapter 3

# Governance: Implementation of the Delta Plan

## Covered Actions Are a Core Responsibility

Central to the work of the Council is this Delta Plan. In contrast to plan implementation in most governmental contexts, the Council does not exercise direct review and approval authority over proposed actions for consistency with the Delta Plan. In most cases, the Delta Plan functions as a strategic plan in that it is a guidance and recommendation document. However, in some cases, actions taken by local or State agencies are “covered actions” as defined in Water Code section 85057.5. The State or local agency proposing to carry out, approve, or fund a “covered action” certifies the consistency of the covered action with the Delta Plan and files a certificate of consistency with the Council. A certificate of consistency may be appealed to the Council within 30 days, alleging that the proposed covered action is not consistent with the Delta Plan. Upon receiving such an appeal, the Council has 60 days to hear the appeal and an additional 60 days to make its decision and issue specific written findings. These indirect processes and tight time lines are unique among California state agencies. They will work most effectively if based on clear regulations, transparency, and energetic Council management of its agenda.

Only certain activities qualify as covered actions, and the Act establishes both criteria and exclusions. This Delta Plan further clarifies what is and is not a covered action. As an example, routine levee maintenance by a reclamation district in the Delta would not be a covered action because it is statutorily excluded. Also, an addition to a house in an incorporated city ~~shall~~would likely not be a covered action because it would not appear to have a significant impact on the Delta. However, a new intake for water supply from the Delta, development of a subdivision in a Delta floodplain that does not meet exclusion criteria in the Act, or establishing a new tidal marsh area are likely to be covered actions.<sup>1</sup>

This Delta Plan incorporates and builds upon existing state policies where possible, with the intention of meeting the Act’s requirements without establishing an entirely new set of policies. For example, Delta Plan regulatory policies on reducing flood risk incorporate recent California legislation that requires upgrades to levees protecting urban areas.

In other cases, Delta Plan regulatory policies seek to prevent actions that may preclude the future implementation of projects that meet the requirements of that Act, such as the acquisition of floodplain area for construction of a new bypass or restoration of certain lands uniquely suited to habitat. Similarly, the Delta Plan includes regulatory policies to protect floodplains and floodways until studies are completed by the Department of Water Resources.

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<sup>1</sup> There are specific exemptions for land in the Secondary Zone that are consistent with a sustainable communities strategy or where a notice of determination was filed by September 30, 2009. For a more detailed list see Water Code section 85057.5.

The Act requires the Council to establish and oversee a committee of agencies responsible for implementing the Delta Plan. The statute directs each agency to coordinate its actions pursuant to the Delta Plan with the Council and other relevant agencies. The Council will commence regularly scheduled coordination meetings of the appropriate and interested agencies upon adoption of the Delta Plan. Council staff has met with federal agencies and is developing the Delta Plan in consultation with these agencies in order to pursue future consistency and compliance with the Coastal Zone Management Act, as required by Water Code section 85300(d)(1)(A).

## How Will the Regulatory Policies of the Delta Plan Work in Practice?

This section includes a discussion of the general requirements for certifying consistency with the Act and additional examples of covered actions. Delta Plan policies are not intended and shall not be construed as authorizing the Council or any entity acting pursuant to this section, to exercise their power in a manner which will take or damage private property for public use, without the payment of just compensation. This policy is not intended to affect the rights of any owner of property under the Constitution of the State of California or the United States. None of the Delta policies increase the State's flood liability.

## What Is the Definition of a "Covered Action"? Who Determines Whether a Proposed Plan, Program, or Project Is a "Covered Action"?

A "covered action" is defined in the Act as:

*"...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:*

- 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." (Water Code section 85057.5(a))*
- 5. No permits considered as ministerial by an agency affected by the Delta Plan shall be considered a "covered action". (we may need to change the location of this comment)(Move to next paragraph below.)*

The first step in determining a "covered action" is to identify whether the proposed plan, program, or project meets the definition in Public Resources Code section 21065. That particular provision is the section of the California Environmental Quality Act that defines the term "project" for purposes of potential review under the California Environmental Quality Act (CEQA). It is important to note that no permits considered as ministerial by an agency affected by the Delta Plan shall be considered a "covered action". It is important to note, however, that CEQA's various statutory and categorical exemptions—~~which are considered for possible application in a CEQA analysis only after the threshold determination~~

of a CEQA "project" is made—~~are not similarly incorporated by cross reference in the definition of "covered action."~~ Thus, for example, while one section of CEQA provides that its terms do not apply to "ministerial projects" (see Public Resources Code sec. 21080(b)(1)), ~~those types of projects do fall under the Act's definition of "covered action."~~

The next step in determining a covered action is to review the four additional conditions in the definition of "covered action," all of which must be met by a proposed plan, program, or project, even if it meets the CEQA definition of a "project."

In order to qualify as a covered action, the action must occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. It must be carried out, approved, or funded by the state or a local public agency.

A proposed plan, program, or project must be covered by one or more provisions of the Delta Plan, meaning that a regulatory policy is applicable to the proposed action. The Delta Plan may exclude specified actions; therefore, those actions would not be covered by one or more provisions of the Delta Plan.

In addition, a proposed plan, program, or project must have a "significant impact" under Water Code section 85057.5(a)(4). For this purpose, the Council has determined that "significant impact" means a substantial or potentially substantial change in existing conditions that is directly, indirectly, and/or cumulatively caused by a project and that will or may affect the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.

Certain actions are statutorily excluded from the definition of "covered action," for example:

- φ a regulatory action of a state agency (such as the adoption of a water quality control plan by the State Water Resources Control Board, or the issuance of a California Endangered Species Act permit by the Department of Fish and Game),
- φ routine maintenance and operation of the State Water Project or the federal Central Valley Project, and
- φ routine maintenance of levees by a reclamation district (Water Code section 85057(b)).
- Routine maintenance and operation of any facility that is owned or operated by a local public entity (Water Code section 85057.5(b)(5))
- plans, programs or projects in the Secondary Zone of the Delta that are consistent with certain regional plans or for which a Notice of Approval or Determination was filed before the effective date of the Delta Plan; and
- plans, programs or projects in the Secondary Zone of the Delta that are consistent with certain specified standards.

Consistent with the above-noted exclusions, cities, counties, and other agencies having regulatory land use authority shall retain their respective land use authority in the Secondary Zone of the Delta within their jurisdictions. Any legislative land use approvals in the Secondary Zone of the Delta made by those jurisdictions prior to the effective date of the Delta Plan and subsequent land use approvals consistent with those prior legislative approvals, shall be excluded by the Act and shall not be considered a "covered action". As an example, if a city has an already approved a General Plan, Urban Service Area, and Master Utility Infrastructure Plans, and has secured Local Agency Formation Commission (LAFCo)



approval of its Sphere of Influence, then, subsequent development approvals in the Secondary Zone of the Delta within their General Plan, Sphere of Influence, and city limit boundaries that are consistent with the adopted General Plan, related entitlements, and with a corresponding certified environmental document for which a Notice of Determination was filed prior to the effective date of the Delta Plan are excluded from the “covered actions” under the Act.

As specified in Paragraph 2 of the Council’s Administrative Procedures Governing Appeals (Appendix A), if requested, the Council’s staff will meet with an agency’s staff during “early consultation” to review the consistency of a proposed action and to make recommendations. The agency’s staff may also seek clarification of whether a proposed project is a “covered action,” provided that the ultimate determination on whether it is a covered action shall be made by the agency, subject to judicial review.

Figure 3.1 shows the steps in identifying a covered action. Agencies retain flexibility in how to meet these responsibilities for covered actions within the parameters of other legal authorities.

**Figure 3.1**  
Decision Tree for State and Local Agencies on Possible Covered Actions

## Certifications of Consistency

State or local agencies that propose to undertake “covered actions” are required to certify with the Council, prior to initiating implementation, that these proposed plans, programs, or projects are consistent with the Delta Plan (Water Code section 85225 et seq.). The Council will develop a check list which agencies may use to facilitate the process. Additionally, as required in statute, an agency that proposes to undertake a covered action must prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan (Water Code section 85225). These findings must be submitted to the Council as part of the certification of consistency. Any person may appeal the certification of consistency and, if a valid appeal is filed, the Council is responsible for subsequent evaluation and determination—as provided in statute and the Council’s Administrative Procedures Governing Appeals—of whether the proposed covered action is consistent with the Delta Plan’s regulatory policies. More than one regulatory policy in the Delta Plan may apply to a covered action.

~~A covered action must not only be consistent with the Delta Plan at time of certification, but to be consistent it must also be implemented as described in its finding of consistency.~~

Certifications for consistency must demonstrate that a covered action is consistent with the Delta Plan by being fully transparent, disclosing potential impacts, demonstrating legal authority and sufficient capacity, complying with all relevant laws, and identifying how best available science will be used in decision-making and adaptive management.

The Act contains multiple references to the use of best available science, including specific requirements such as, for example, that ongoing ecosystem restoration or water management decisions include a science-based, transparent, and formal adaptive management strategy (Water Code section 85308(f)). Best available science involves not only the use of sound information but is a process that meets the criteria of (1) relevance, (2) inclusiveness, (3) objectivity, (4) transparency and openness, (5) timeliness, and (6) peer review (National Research Council 2004). Best available science is consistent with the scientific process (Sullivan et al. 2006). Best available science is specific to a decision context and would necessarily be related to the specific decision to be made and the time frame available for that decision. For science to be considered “best available” to support a decision, reasonable care must be taken to identify all available and relevant scientific information. Sources for best available science may include peer-reviewed publications, general scientific reports and publications, scientific expert opinion, or even anecdotal evidence. See Chapter 2 for a more detailed discussion of best available science. Table 2-1 establishes the priority for the value placed on each information source.

## Policy

G P1 Certifications for consistency with the Delta Plan must address the following:

1. All covered actions must be fully transparent by disclosing all potentially significant adverse environmental impacts and mitigations of those adverse impacts.
2. To the extent that a covered action has been the subject of an environmental impact report or mitigated negative declaration pursuant to the California Environmental Quality Act, the certification shall disclose how the proposed action is to be carried out consistent with the All  
~~covered actions must be based on best available science.~~ [COUNCIL TO DISCUSS FURTHER]

3. To the extent that a covered action involves the operation and maintenance of a facility, the certification must demonstrate managerial and financial capacity to implement the covered action over the long term. All covered actions must demonstrate managerial and financial capacity to implement the covered action over the long term. Managerial capacity, including includes ownership and water rights relevant to the covered action, as applicable. Financial capacity includes budgeting, capital improvement planning, and a financing plan relevant to the covered action.
4. All covered actions must identify and comply with existing relevant law, including water quality regulations and water rights, as applicable.
5. Large-scale ecosystem restoration and water management covered actions must include adequate provisions to assure continued implementation of adaptive management consistent with the Delta Plan. This requirement shall be satisfied through:
  - ϕ an adaptive management strategy consistent with the adaptive management framework of Chapter 2;
  - ϕ documentation of how the proposed covered action will achieve its desired result;
  - ϕ performance measures and targets relevant to meeting the Delta Plan's objectives enumerated in Section 85302(c), Section 85302(d), and Section 85302(e);
  - ϕ monitoring and analyses requirements sufficient to make adaptive management decisions and to capture any effects that may help or hinder achieving the coequal goals as expressed in the Act or the Delta Plan;
  - ϕ documentation of delineated authority by the agency responsible for the covered action to support the implementation of the full adaptive management process, including planning, implementation, monitoring, data management, analyses, obtaining the best available science, communicating results, supporting decision making, and full implementation of any changes in implementation of the covered action; and
  - ϕ procedures ensuring public release of all information developed related to adaptive management, including, but not limited to, primary data, modeling, analyses, and syntheses of research findings.

## Changing the Delta Plan

### Incorporation of Another Plan into the Delta Plan

The Council may incorporate another plan, in whole or in part, into the Delta Plan. When fully incorporated, these elements of another plan become the basis for consistency determinations and relevant to the actions of State and local agencies. The agency which has the original plan authority will continue to take actions under that authority.

### Incorporation of the Bay Delta Conservation Plan into the Delta Plan

The Bay Delta Conservation Plan is a major project considering large-scale improvements in water conveyance and large-scale ecosystem restorations in the Delta. When completed, it must be incorporated into the Delta Plan if it meets specified conditions. Completion of the Bay Delta Conservation Plan process and the full suite of projects now under consideration in that process would have large impacts on

WQ R4 The State Water Resources Control Board and Central Valley Regional Water Quality Control Board should require participation by all water users that directly and indirectly discharge flows to the Delta in the Central Valley Salinity Alternatives for Long-Term Sustainability Program.

## Environmental Water Quality

The Delta ecosystem is influenced by a variety of pollutants discharged into Delta and tributary waters. Currently, excessive amounts of ammonia and nitrate, and the ratio of nitrogen to phosphorus are negatively affecting the productivity and species composition of phytoplankton in the Delta, and stimulating growth of nuisance algae (Wilkerson et al. 2006, Dugdale et al. 2007, Jassby 2008, Glibert 2010). This may negatively affect ecosystem dynamics and cause localized toxicity to aquatic organisms (Werner et al. 2008). In addition, Delta and tributary waters are impaired by pesticide contamination from urban and agricultural pollutants. Pesticides in current use cause measurable toxicity in the Delta and its tributaries, and new types of pesticides continue to be approved. New pesticides are sometimes approved for use without a full understanding of the potential impacts on aquatic species and ecosystems (Kuivila and Hladik 2008, Werner et al. 2008).

Selenium is another contaminant of concern in agricultural runoff, particularly in the San Joaquin Valley where naturally occurring selenium has concentrated in soils and shallow groundwater because of continued irrigation and changes in groundwater hydrology, causing reproductive toxicity to fish and wildlife (Luoma et al. 2008). Selenium compounds are found in some invertebrate species that could be harmful to fish and wildlife consuming these organisms. Methylmercury also bioaccumulates in the food web to concentrations in some Delta fish that currently exceed public health criteria and require consumption warnings.

### Problem Statement

Pollutants contained in municipal, industrial, agricultural and other non-point source discharges to the Delta and its tributary waterways, including pollutants that bioaccumulate and biomagnify in the food web, contribute to the impairment of the Delta ecosystem.

### Policies

At this time, there are no policies with regulatory effect included in this section.

### Recommendations

WQ R5 The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards are currently engaged in regulatory processes that would improve water quality in the Delta. In order to achieve the coequal goals, it is essential that these ongoing efforts be completed and if possible accelerated, and that the Legislature and Governor devote sufficient funding to make this possible. The Council specifically recommends that:

- φ The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards should develop and adopt numeric objectives for nutrients in the Delta and Delta watershed as soon as there is sufficiently-rigorous science to justify the establishment of, and cost of compliance for, such numeric objectives for nutrients by January 1, 2014.
- φ The State Water Resources Control Board, the San Francisco Bay and Central Valley Regional Water Quality Control Boards, and the Department of Pesticide Regulation should complete the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for diazinon and chlorpyrifos by January 1, 2013.

## ***Recommendations***

- RR R4 The Legislature should provide specific immunity for public safety flood protection activities, similar to that provided for police and correctional activities (Government Code section 844), and fire protection activities (Government Code section 850).
- RR R5 The Legislature should require an adequate level of flood insurance for ~~individuals~~ residences, businesses, and industries in floodprone areas.

## **Financing of Local Flood Management Activities**

No regional authority exists to facilitate the assessment and disbursement of funds for Delta levee operations, maintenance, and improvements, or to collect and provide timely data and reporting on levee conditions. Such an authority could act to consolidate activities relating to levees conditions assessment, data collection efforts, emergency preparedness notification, and fee authority. This could provide for a more centralized and responsive entity managed on a local basis for Delta interests.

### ***Problem Statement***

Financing of local levee operations, maintenance, and related data collection efforts is not well coordinated.

### ***Policies***

At this time, there are no policies with regulatory effect included in this section.

## ***Recommendations***

- RR R6 A Delta Flood Management Assessment District should be created with fee assessment authority (including over state infrastructure) to provide adequate flood control protection and emergency response for the regional benefit of participants within the Delta.

This district should be authorized to:

- φ Develop, fund, and implement a regional plan of flood management for both Project and nonProject levees of the Delta in cooperation with the existing reclamation districts, cities, counties, and owners of infrastructure protected by the levees;
- φ Survey levees and report survey and conditions data to the Department of Water Resources at least every 5 years;
- φ In coordination with the Department of Water Resources and Corp of Engineers, establish standardized flood risk measurement data. This data should support the development of Expected Annual Damage values for the Delta. Expected Annual Damage is a measure of risk that integrates the likelihood and consequences of flooding, and is also the standard measure of the benefits of reducing flood risk;
- φ Notify residents and landowners of flood risk on an annual basis;
- φ Develop emergency procedures including but not limited to evacuation.

Note that the Council is recommending in the Finance Plan (FP R4) that the proposed agency be given funding (up to \$110 million) to develop and implement the regional plan.

- φ The California Public Utilities Commission should immediately commence a formal hearing to impose a reasonable fee for flood and disaster prevention of regulated privately owned utilities that cross the Delta. Publicly owned utilities should also be encouraged to develop similar fees. The Council, in consultation with the California Public Utilities Commission and the Delta Protection Commission, should allocate these funds between state and local emergency response and flood protection entities in the Delta, including the State of California. If a regional flood management agency is authorized by law, the local share would be allocated to that agency for its purposes.
  - φ The California Public Utilities Commission should direct all regulated public utilities in their jurisdiction to immediately take steps to protect their facilities in the Delta from the consequences of a catastrophic failure of levees in the Delta, and to minimize the impact on the State's economy.
  - φ The Governor, by Executive Order, should direct state agencies with projects or infrastructure in the Delta to set aside a reasonable amount to pay for flood protection and disaster prevention. The local share of these funds should be allocated as described above.
- FR R3 A regional flood management agency should be created which at first is funded with \$10 million dollars to develop a benefit assessment plan for the Delta. The council also recommends an additional \$100 million for implementation, to be funded by Propositions 1E and 84 to match on a 50 percent basis with non state funding.
- FP R4 The Legislature should allocate \$50 million of Prop. 1E funds to the Department of Water Resources and direct the Department to begin the acquisition of land or easements for the proposed San Joaquin/South Delta Flood Plain.
- FP R5 Appropriate funding should be continuously appropriated in support of the Department of Water Resources' Delta Levees Subventions and Special Projects, FloodSAFE, and the Central Valley Flood Protection Board.
- FP R6 A clear report on total spending for water resources in California should be established. For the purpose of accountability, all existing sources of funding for water facilities and operations, and all currently authorized bond spending for water resource purposes, should be consolidated in one water budget for the State of California. The Council, which assumed the duties and responsibility of the previous CALFED Bay-Delta Authority in preparing a state-federal CALFED crosscut budget, should continue to fulfill those duties.
- FP R7 User Fees/Stressors Fees to support the coequal goals and the Delta Plan.
- φ The Legislature should grant the Council the authority to develop reasonable fees for beneficiary, and reasonable fees for those who stress the Delta ecosystem through the diversion of water, introduction of pollutants or other means, and apply such fees to the operational costs of the Council, the Delta Conservancy and the Delta Protection Commission to allow implementation of the Delta Plan. The legislation should require that such fees be implemented fairly to ensure that no category of stressor (agricultural or urban) shall be disproportionately burdened in terms of the fee to be charged of the timing of its implementation and imposition.
  - φ The costs of operations of the Council, Delta Conservancy, and Delta Protection Commission should be advanced for a period of ten (10) years. As previously discussed, the unified budget of the new governance structure is approximately \$XX million.
  - φ Repayment of these costs would be made in annual amounts commencing in 2022, from the fees imposed as recommended above. Repayment should be completed no later than 2032.

- φ Revenue bond authority should be granted to implement the Delta Plan should a fiscal partner be found.

FP R8 The Delta Conservancy should investigate carbon offsets as a revenue source for Delta islands.

FP R9 Clarify assessment authority for local water agencies. The California State Legislature should amend AB 3030 and SB 1938 to allow local agencies to assess fees under Proposition 218.

### ***Near-term Funding Recommendations***

FP R10 Establish a Public Goods Charge for Water. The Legislature should create a public goods charge (similar to the energy public goods charge created in 1996) on urban ~~water users~~, and agricultural water users ~~as well~~. This fund would provide for ecosystem costs that were once paid with general obligation bonds, or could be used for State water management costs such as developing the California Water Plan Update.

FP R11 By January 2015, the Department of Water Resources should complete a report on recommendations for prioritized State investments for levee operations, maintenance, and improvements in the Delta. The report should be developed, based upon a Delta-wide comparative benefit/cost analysis. Benefits should be specifically identifiable and calculable but broadly based, not limited to an analysis of the value of land behind a levee. Such a report should be developed in collaboration with the Council, local agencies, federal agencies and the proposed new Delta Flood Management Assessment District.

## **Funding Sources**

Some potential funding sources that could be part of a financing strategy are described in this section. In developing the financing strategy, the approaches used by other major programs around the country were also explored. Some of the more innovative approaches are described here.

### **Capital Funding Sources**

To implement the Delta Plan infrastructure improvements, and for financing habitat acquisitions and improvements, capital funding sources will need to be identified. Capital funding sources may include federal appropriations, State general fund appropriations, State-issued debt, local debt, and private funding.

#### ***Federal Appropriations***

Federal appropriations pay for the taxpayers' share of capital costs and require the approval of Congress. Federal authorization already exists for several Delta programs, and the challenge will be for Congress to appropriate funds annually. Similar to the State's financial condition, there are increasing demands from all sectors of the federal budget, which makes obtaining federal funding more difficult.

#### ***General Fund Appropriations***

General Fund appropriations may pay for the taxpayer share of capital and operating costs and may be used for any purpose. However, the State's fiscal condition will limit their availability in the future.

#### ***State-issued Debt***

The State traditionally has issued two types of debt for water related infrastructure: general obligation bonds and revenue bonds. General obligation bonds must be approved by voters, and their repayment is guaranteed by the State's general taxing power, resulting in typically low interest costs. Revenue bonds

The potential for diversion fees is also limited by the inconsistency and lack of water diversion measurement in some places. Diversions are measured by a variety of methods, and some diversions are not routinely measured. The costs of standardized measurement could be significant relative to the amount of fees collected.

Several efforts in the past estimated the fees that could be collected if the fees were similar to Bureau of Reclamation restoration fees. In 2000, one author estimated that average nonCentral Valley Project contract diversions of 13.182 million acre feet with fee levels similar to Central Valley Project restoration fees could provide about \$105 million in annual revenues (Wahl 2000). In 2004, CALFED estimated that potential fee levels per acrefoot-year of diversion would raise \$25 million in annual funds based on "normal" nonCentral Valley Project contract diversions of 16.522 million acre feet. These fee levels were \$1.50 for all users, or \$1.25 for agriculture and \$2.50 for urban users, or \$3.25 for Delta exporters and \$1 for all others (CALFED 2004). CALFED also estimated that a residential fee of \$1 per month per household in the CALFED solution area could raise \$106 million annually.

### ***Fishing Fees and Payments***

From 2004 through 2009, recreational fishing within the BayDelta watershed below the first dam required a BayDelta Sport Fishing Enhancement Stamp. In 2009, about 300,000 stamps were sold at a retail cost of \$6.30, and gross revenues were about \$1.9 million. These funds were used to leverage a 75 percent cost share from the federal Sport Fish Restoration Act. In 2009, Assembly Bill 1052 repealed the stamp (California Department of Fish and Game 2011a). The Council should consider supporting legislation to renew this funding source.

A stressorsbased finance charge would collect fees based on removals of desirable species. In 2011, inland steelhead anglers are required to purchase a Steelhead Report Card at a cost of \$6.48, and a North Coast Salmon Report Card costing \$5.66 is required for all anglers taking salmon in the Smith River System or KlamathTrinity River System (California Department of Fish and Game 2011b). Annual revenues from 2001 to 2006 from the steelhead card averaged about \$200,000 (Jackson 2007). Any person fishing commercially for salmon in California must purchase a commercial fishing salmon stamp for \$85. Similar fees might be collected when substantial salmon fishing is again allowed in the BayDelta system. In 2006, about 500,000 freshwater and 1 million saltwater days were taken for salmon fishing (California Department of Fish and Game 2010). Revenue potential from recreational salmon cards is perhaps \$500,000 to \$1 million annually.

### ***Hydropower Fees***

Fees could be collected from hydropower generators in the BayDelta system. The State Water Resources Control Board collects fees from licensed Federal Energy Regulatory Commission projects of \$0.017 per kilowatt capacity, and higher fees are collected from facilities that recently renewed their Federal Energy Regulatory Commission licenses (State Water Resources Control Board 2010). These fees must be used to cover authorized costs of the Water Rights Program. The potential for additional revenues from hydropower generators is unknown.

### ***Other Stressor Fees***

A variety of stressor fees might be used to help finance programs within the Delta Plan. Seven types of stressor fees have been considered:

1. Water quality loading charge: charge measured pollutant loads in water discharges. However, no charge is to be assessed for discharges in compliance with discharge permits issued by the State Water Resources Control Board or the Regional Water Quality Control Board.
2. Land use charge: charge land use practices that contribute to stressors and not in conformance with the Delta Plan.



3. Retail sales fees: charge retail sales of products that may become stressors.
4. Habitat alteration fees: charge existing or proposed land alterations that contribute to habitat stressors.
5. Special diversion fees: charge water diversions that contribute more than average to entrainment, stranding, or flowrelated habitat loss.
6. Recreation use fees: charge for recreation that contributes to stressors.
7. Hatchery fees: charge hatcheries for management practices that damage Delta resources.

Of these seven stressorbased fees, the water quality loading charge appears to be relatively most feasible. The “polluter pays” principle is well established in law. Many waste dischargers already pay fees that are set by the State Water Resources Control Board and deposited into the Waste Discharge Permit Fund. For fiscal year 2008–2009, revenues were about \$80 million.

Most of the loads of some pollutants, ammonia and certain chemicals in particular, come from known discharges where the amount of load can be measured. The cost of removing the stressors by another means may determine a fair and efficient charge level. It is important to consider as well that the customers of publicly owned wastewater treatment facilities are already burdened by the high costs of implementing an ever increasing array of strict environmental obligations and it would be unfair to further add that burden without ensuring that other activities that discharge pollutants into the Delta are proportionately burdened with a similar charge. There are important measurement and administrative costs, but these could be small compared to revenues.

The other stressor based fees are generally not as straightforward. For land use charges, a fee for land management practices that release methyl mercury, perhaps, the stressor being introduced is often diffuse, not well measured, and the amount may vary substantially based on location and local conditions. It may be unfair or expensive to set land use charges based on diffuse and hardto measure stressors. Proposition 218 procedures must be applied for stormwater fees, so they would likely apply to land use charges as well.

A charge on retail sales of stressor materials such as pesticides or fertilizers might also be problematic because materials are used in a wide variety of locations and situations. The legal feasibility of such charges is not clear.

There is good potential to establish charges for some types of habitat alteration practices, such as wetland conversions. However, such charges might fall under Proposition 218. The special diversion charge would be difficult to justify because the amount of unusual damage via entrainment, stranding, or flow habitat loss would often be difficult to quantify and value. Hatchery management fees might be inefficient compared to other efforts to improve hatchery practices.

The revenue potential from stressors fees is unknown, but not believed to be large. Also, it is likely that any stressor fees could be spent for a very limited range of activities that would benefit the persons paying the fee. There is some potential for revenues in the form of fishing stamps (probably less than \$5 million annually) and additional water quality loading charges.

### **Water Marketing Fees**

Water marketing fees would be applied to water transfers in the Delta watershed. These fees would be above and beyond any existing watershed diversion or export fees. The State Water Resources Control Board currently collects fees associated with change in water rights required for transfers.

The number of water transfers that occur between existing water agencies is not large compared to total statewide water use. During the drought years of 2008 and 2009, about 400,000 acre-feet of crossDelta

# Appendix A

## I. Administrative Procedures Governing Appeals

## II. Statutory Provisions Requiring Other Consistency Reviews

Following are proposed changes to the draft Appendix A:

At the end of paragraph 5, add the following sentence: "The appellant shall simultaneously file a copy of the appeal with the affected state or local agency."

Paragraph 6, subparagraph "e)", amend to read as follows: "e) The specific grounds for appeal, including a detailed description of the provision(s) of the Delta Plan that pertain to the action taken and specific areas the appellant alleges that the covered action is not consistent with the Delta Plan and as result will have a significant impact on the achievement of one or both of the co-equal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interest in the Delta."

Add a paragraph 15.5, to read as follows:

Appeals of revised certifications shall be based only upon, and shall be limited to consideration of, the failure of the state or local agency to conform to the findings made by the Council in the prior appeal of the same covered action.

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